IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/09/2003

CORAM

THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU
AND
THE HONOURABLE MR.JUSTICE C.NAGAPPAN

WRIT APPEAL No.907 of 1999 and WRIT APPEAL No. 908 of 1999

C.Natarajan ... Appellant in
W.A.908/99 and
petitioner
in W.P.1147/88

K.Jaganayaki ... Appellant in
W.A.907/99 and
petitioner
in W.P.2600/88

-Vs-

1. Sowdambigai Elementary &
High School, Allampatti,
Virudhunagar, rep.by its
Secretary

2. The Chief Educational Officer,
Virudhunagar,
Kamarajar District.

3. The District Educational Officer,
Virudhunagar,
Kamarajar District.

4. The Subordinate Judge,
Ramanathapuram at Madurai.
(Tribunal constituted under
the Tamil Nadu Private
Schools (Regulation) Act.) ... Respondents

Writ Appeals under Clause 15 of Letters Patent against the
common order of a learned Single Judge in W.P.Nos.1147 and 2600 of 1988, dated
12.4.1997.

!For Appellants .. Mr. K.V.Subramanian

^For Respondents .. Mr.M.Joseph Thatheus Jerome,
for R-1

Mrs.N.G.Kalaiselvi,
Special Govt. Pleader
for RR2 and 3.

:JUDGMENT

C.NAGAPPAN,J

Both the writ appeals arise out of a common order, dated 12.4.1997, passed in W.P.Nos.2600/1988 and 1147 of 1988 respectively.

2. The writ petitioners are the appellants and they are husband and wife and they will be referred to by their names in this judgment.

3. Appellant Natarajan originally founded the first respondent school in the year 1963 and the school was upgraded as Middle School and he was working as Secondary Grade Teacher in the school. The management of the school framed nine charges against the appellant in the year 1982 and conducted enquiry. Meanwhile, the appellant filed Writ Petition No.302 of 1983 on the ground that he was not given sufficient opportunity and pursuant to the order passed by this Court, enquiry was conducted from 6.4.1983 to 9.4.1983 and the appellant participated. The school committee held the appellant guilty of the charges and that report was accepted and the third respondent gave approval for terminating the appellant from service and the dismissal order was issued on 25.6.1983 by the first respondent. Appellant Natarajan preferred an appeal before the second respondent and that came to be dismissed. Thereafter, the appellant filed a second appeal before the fourth respondent Tribunal and it confirmed the dismissal order. Challenging the same, the writ petition No.1147/1988 came to be filed by the appellant Natarajan.

4. Appellant Jaganayaki was working as Headmistress in the first respondent school and the management of the school framed fifteen charges against her in the year 1982 and she was set ex-parte in the enquiry. The school committee held the appellant guilty of the charges and that report was accepted and the third respondent gave approval for terminating her from service and the dismissal order was passed by the first respondent. Appellant Jaganayaki preferred appeal before the second respondent and that came to be dismissed. Thereafter, the appellant filed a second appeal before the fourth respondent Tribunal and it confirmed the dismissal order. Challenging the same, the writ petition No.2600/1988 came to be filed by the appellant Jaganayaki.

5. The writ petitioners contended before the learned single Judge that they have not been given proper opportunity to defend their cases and the enquiry officer was biased against them and the enquiry is bad in law on account of violation of principles of natural justice and on the other hand the respondents contended that the petitioners were given reasonable opportunity in the enquiries and only after the approval of the third respondent, punishment of dismissal was imposed. The learned Single Judge held that ample opportunities were given to the petitioners in the enquiry and the school committee considered the relevant facts and imposed the punishment

of dismissal after obtaining approval from third respondent and there are no merits in the writ petitions and dismissed the same. Aggrieved by it, the petitioners have filed the present writ appeals.

6. The learned counsel for the appellants mainly contended that reasonable opportunities were not given to the appellants in their enquiries to defend the charges and, therefore, there is violation of principles of natural justice and the proceedings are vitiated. Per contra, the learned counsel for the first respondent school contended that both the appellants filed their objections to the charges and participated in the enquiries and they were given ample opportunities in the proceedings and the finding was rendered after consideration of the materials on record.

7. Nine charges were framed against the appellant Natarajan and he also offered explanation for the charges and the school committee commenced the domestic enquiry on 31.7.1982 and the appellant participated in the enquiry and also cross examined the first witness and the enquiry was adjourned to 11.8.1982. At the request of the appellant, the enquiry was adjourned and the appellant was informed by telegram sent on 19.8.1982 about the enquiry being fixed on 20.8.1982. Appellant Natarajan sought for a short adjournment by letter, dated 19.8.1 982 and he did not participate in the enquiry held on 20.8.1982. However, the school committee conducted enquiry on 20.8.1982 in the absence of the appellant by examining all the witnesses and came to the provisional conclusion of dismissing him from service. Meanwhile, appellant Natarajan filed Writ Petition No.302 of 1983 and this Court, by order dated 28.3.1983, directed the school management to conduct a fresh enquiry in which the appellant was asked to participate. Accordingly, the school committee furnished all the documents to the appellant and conducted enquiry from 6.4.1983 to 9.4.1983 and the appellant participated and cross examined the witnesses and further examined five witnesses on his side. The school committee, on reaching the provisional conclusion to dismiss the appellant Natarajan from service, obtained the approval of the competent authority and issued second show cause notice on the proposed punishment and then passed final order of dismissal. Insofar as this appellant is concerned, full opportunity was given to him to defend the charges and there is no violation of principles of natural justice and the contention raised by this appellant is devoid of merit.

8. Fifteen charges were framed against appellant Jaganayaki and she also gave her explanation and the school committee commenced the domestic enquiry on 31.7.1982. On that day, the appellant participated in the enquiry and cross examined in part the first witness, namely, the correspondent and school secretary P.P.M.Ramasamy and the enquiry was adjourned to 7.8.1982. As the Chairman of the Enquiry Committee was not available, it was further adjourned to 11.8.1982. Appellant Jaganayaki, in her letter dated 10.8.1982, req uested reinstatement as per the order of the District Educational Officer, namely, the third respondent herein, and then conduct enquiry. The enquiry was further adjourned and the appellant Jaganayaki was informed on 19.8.1982 through telegram that the enquiry is fixed on 20.8.1982. Appellant Jaganayaki by letter informed that she is taking treatment and sought for one or two days time to attend the enquiry. However, the school committee resolved on 20.8.1982 to conduct ex-parte enquiry and further examined the correspondent and three other witnesses on that date and held that 13 charges stood proved and obtained the approval from the competent authority and issued second show

cause notice on 5.3.19 83 to the appellant Jaganayaki to show cause as to why the punishment of dismissal should not be imposed and after receiving her explanation, terminated her services.

Even though the first respondent school committee pursued departmental enquiries against both the appellants, simultaneously, it conducted a fresh enquiry only in the case of appellant Natarajan on account of the order passed by this Court in the writ petition. It is no doubt true that appellant Jaganayaki did not challenge the enquiry proceedings at that time, like her husband but still it has to be seen as to whether the principles of natural justice have been complied with in the conduct of enquiry.

9. The learned counsel for the appellant strenuously contended that the school committee, without any justification, refused the reasonable request of adjournment made by appellant Jaganayaki on 19.8.1982 on health grounds and hence the proceedings have to be set aside on the ground that there has been a violation of the principles of natural justice and he relied on the decision of the Apex Court in MUNICIPAL CORPORATION OF GREATER BOMBAY vs. THE B.R.S.T. WORKERS UNION ((1 973) 3 SCC 546. The Supreme Court in the above decision held that it may be on certain occasions, the employee may seek adjournment or postponement of the enquiry either on the ground of his personal inconvenience due to sickness or otherwise or due to the inability of his witnesses to be present and if the employer, without any justification refuses such a reasonable request and proceeds with the enquiry, the proceedings will have to be set aside on the ground that there has been a violation of principles of natural justice in denying the workman a reasonable opportunity to defend the charges against him. No doubt, the above decision arose under the Industrial Disputes Act but still the reasoning of the Apex Court has to be borne in mind.

10. Appellant Jaganayaki participated only on the first day of the enquiry proceedings during which the first management witness was partially examined and the enquiry was adjourned. Later, the first respondent school management sent a telegram on 19.8.1982 stating that the enquiry is scheduled on 20.8.1982 and at that time, appellant Jaganayaki has sought for one or two days adjournment on the ground of taking medical treatment and that request was refused. It is no doubt true that the appellant was under suspension and there is necessity for the conclusion of the enquiry at an early date, but that does not mean that reasonable request for a short adjournment has to be turned down. Moreover, in the present case, the enquiry itself was started only on 31.7.1982 and as already seen, the enquiry date had been informed in the last minute. In such circumstances, the denial of the adjournment sought by the appellant on 19.8.1982 does not stand to reason.

The other appellant Natarajan was also informed by telegram on 19.8 .1982 only about his enquiry being fixed on 20.8.1982 and he also sought for an adjournment which was refused. However, he challenged the enquiry proceedings by way of writ petition and this Court directed a fresh enquiry to be conducted in his case. Though the first respondent conducted a fresh enquiry in the case of appellant Natarajan, it did not do so in the case of appellant Jaganayaki. In short, the appellant Jaganayaki was not given a reasonable opportunity to defend herself against the charges and there is violation of principles of natural justice.

11. Learned counsel for the appellant raised another contention that the enquiry is vitiated on account of non payment of subsistence allowance to

appellant Jaganayaki during the suspension period and relied on the decision of the Constitutional Bench of the Apex Court in GHANSHYAM DAS SHRIVASTAVA vs. STATE OF MADHYA PRADESH ((1973) 1 SCC 656). Their Lordships of the Apex Court held in the above decision that a Government Servant who was under suspension did not receive subsistence allowance and it is not shown that he had sufficient money to enable him to go to the place of enquiry and in their opinion, he could not attend the enquiry for that reason and hence there was no reasonable opportunity provided to him for defending himself in the enquiry proceedings and the enquiry is vitiated on the ground of violation of Article 311(2) of the Constitution of India. In the present case, appellant Jaganayaki demanded payment of subsistence allowance in her letter, dated 18.8.1982 and still, it was not paid and there is no dispute with regard to the above fact. Though appellant Natarajan was paid a portion of the subsistence allowance as directed by this Court, the appellant Jaganayaki was not paid subsistence allowance and hence the enquiry proceedings against her are vitiated on this ground also.

12. The learned counsel for the appellants further contended that the Secretary of the School Committee P.P.M.Ramasamy appeared as a witness for the management in the enquiry and also participated as a Member of the School Committee and it has vitiated the enquiry proceedings and in this regard he relied on the decision of the Apex Court in RATTAN LAL SHARMA vs. MANAGING COMMITTEE, Dr.HARI RAM (COEDUCATION) HIGHER SECONDARY SCHOOL AND OTHERS ((1993) 4 SCC 10). This contention is factually incorrect. The correspondent P.P.M.Ramasamy is the Secretary of the School. He appeared as the first witness for the management in both the enquiries. The enquiry in both the cases has been made by the School Committee consisting of K.Paramasivam, President of the School Committee and nine other members. The Secretary did not sit as a member of the School Committee in both the disciplinary proceedings. In fact, the School Committee which sat for the enquiry pertaining to the charges against appellant Jaganayaki on 20.8.1 982 consisted of K.Paramasivam, S.Sornammal, K.Raju, M.Thangammal, R.Rajagopal, A.S.Jayaram, K.Sankaralingam, M.M.Punnaivanam, M.R.V. Rajamani and M.Subbiah and that committee has given the enquiry report. The Secretary P.P.M.Ramasamy did not act as a member of the above committee and he in the capacity as secretary sought the approval of the competent authority based on the enquiry report and also passed the termination order.

Insofar as the disciplinary proceedings against appellant Natarajan is concerned, the Secretary P.P.M.Ramasamy only appeared as a witness for the management and did not act as a member of the school committee in the enquiry and the enquiry report, dated 11.4.1983, is signed by the President of the School Committee as well as other members. Hence, the contention raised by the appellants cannot be sustained in view of the factual details mentioned above.

13. In the writ appeals, the appellants have sought permission to raise an additional ground, viz., the termination orders, which are impugned in the writ petitions, have been passed by a committee which is not constituted as per the Tamil Nadu Private Schools (Regulation) Act, 1973 and is a quorum non juris. According to them, they came to know now only that the school committee which conducted the enquiry and passed the impugned order of termination is not validly constituted and approved school committee as per the Tamil Nadu Private Schools (Regulation) Act, 1973. Permission is now

sought

for to raise this new ground after a period of 20 years and this objection asto the validity of the Committee was not raised at all in the earlier proceedings. In the facts and circumstances of the case, we are not inclined to grant this permission.

14. Lastly, it was contended by the learned counsel for the appellants that the third respondent, namely, District Educational Officer, had accorded his prior approval even before the management issued second show cause notice regarding the punishment to be awarded and it is not a valid approval as per Section 22 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. As per the terms of Section 22(1) of the Act, prior approval for effecting termination of the teacher is necessary and it is intended to be a safeguard to protect the interest of the teacher. The Apex Court has considered the scope of Section 22 of the Act as well as Rule 17 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 in the recent pronouncement in SECRETARY, SCHOOL COMMITTEE, THIRUVALLUVAR HIGHER SECONDARY SCHOOL vs. GOVERNMENT OF TAMIL NADU AND OTHERS ((2003) 5 SCC 200. The observations of Their Lordships are relevant and it is extracted as follows.

"10.Though attempt was made to contend that at the stage of consideration under Sections 22(1) and 22(2) and Rule 17(1), there is no scope for looking into the proportionality of the punishment aspect, the same is clearly without any substance. What an authority is required to do at that stage is to see whether the proposed punishment is to be approved. Obviously, it has to consider whether the punishment as proposed is a proper one; otherwise there is no need for seeking its approval. The crucial words used in sub-section (2) of Section 22 are "adequate and reasonable grounds" for the proposal. The proposal relates to dismissal, removal or reduction in rank or otherwise termination of appointment of any teacher or any other person employed in a private school. While considering whether adequate and reasonable grounds exist for giving approval, the authority is certainly required to look into the gravity of the proved charges and whether the punishment as proposed commensurates with it. Any other interpretation would make the question of approval an exercise in futility.

11. Stand of the learned counsel for the management is that if adequate and reasonable grounds exist for the action, then no other question needs to be looked into. This argument overlooks a vital aspect that the adequacy and reasonableness of grounds are relatable to the proposals for the enumerated actions. The proposed actions being punishments, there is an inbuilt requirement to see whether the quantum of punishment commensurates with the gravity of the proved charges. Therefore, clearly the authority has jurisdiction to decide the question as to whether the punishment proposed commensurates with the proved charges. One of the related pleas was that if the quantum of punishment is permitted to be considered, it would partake the character of an appeal. This plea is equally untenable. Sections 22 and 23 operate in different fields. At the stage of consideration under Section 22, the teacher does not get any opportunity for presenting his side of the case. This opportunity is provided under Section 23 or Section 24, as the case may be. The authority under Section 22 takes decision on the material placed

before it by the management. So the question of action under Section 22 partaking appellate characteristics does not arise."

15. It is clearly laid down that at the stage of consideration under Section 22, the teacher does not get any opportunity for presenting his side of the case and the authority takes decision on the materials placed before it by the management. Once the disciplinary authority comes to a view that there was adequate material for imposing a particular punishment and when it is placed before the approving authority, it has to consider whether the proved charges, on the facts and materials, justify that particular punishment and decide the question of approval accordingly.

16. There is one more fallacy in the contention raised by the counsel for the appellants. According to the learned counsel, on conclusion of the enquiry, the management has to take a view with regard to the punishment and has to issue a second show cause notice regarding the punishment to the delinquent and after getting his explanation, the materials have to be placed before the approving authority for consideration. The view of the management with regard to imposing of a particular punishment must have prior approval of the competent authority before it is put to the delinquent and there is no question of getting subsequent approval. Hence the contention raised by the appellants is devoid of merit.

17. In fine, we do not find any error or illegality in the enquiry pertaining to appellant Natarajan and the conclusion of the learned single Judge does not warrant any interference. Writ Appeal No.908 of 1999 is dismissed. No costs.

At the same time, appellant Jaganayaki was not given reasonable opportunity to defend herself against the charges in the enquiry and the enquiry is vitiated on the ground of violation of principles of natural justice. Hence the termination order is quashed and the order of the learned single Judge is set aside.

We were told that appellant Jaganayaki reached the age of superannuation on 13.3.1993 after putting in 20 years of service. Having regard to the facts and circumstances of the case, we feel that payment of 75% of salary for the period concerned upto the date of superannuation shall be proper. This payment shall be made by the first respondent school management. Writ Appeal No.907 of 1999 is disposed of accordingly. No costs. WAMP.Nos.938 and 939 of 2002 are dismissed.

Index: Yes.
Internet: Yes.

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To:
1. The Secretary, Sowdambigai Elementary &
High School, Allampatti,
Virudhunagar.

2. The Chief Educational Officer,
Virudhunagar,
Kamarajar District.

3. The District Educational Officer,
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